

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Anthony E. Bush, Esq. (N.J. Attorney ID No. #003761990)

Physical Address: 2000 Lenox Drive, Suite 203, Lawrenceville, NJ 08648

Mailing Address: P.O. Box 5404, Princeton, NJ 08543

Telephone: (609) 392-2100

Facsimile: (609) 392-7956

Attorneys for Plaintiff, NextGear Capital, Inc.

NEXTGEAR CAPITAL, INC.,

Plaintiff,

v.

THE LUXURY HAUS, INC., and
ANTONIO L. GUTIERREZ and ABC CO.,
and EDITH GUTIERREZ, jointly and
severally,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: BERGEN COUNTY: LAW DIVISION
: DOCKET NO.: BER-L-7268-16

:

: Civil Action

:

:

: **NOTICE OF MOTION FOR LEAVE TO**
: **FILE A SECOND AMENDED**
: **COMPLAINT IN CONJUNCTION WITH**
: **A FILED ORDER TO SHOW CAUSE**
: **SEEKING ENTRY OF AN ORDER AND**
: **WRIT OF REPLEVIN ON RETURN**
: **DATE**

To: Ian Hirsch, Esq.
Law Offices of Ian J. Hirsch & Assocs., LLP
75 Essex St., Suite 220
Hackensack, New Jersey 07601

Ross Katz, Esq.
Schiller & Pittenger, P.C.
1771 Front St.
Scotch Plains, New Jersey 07076

Edith Gutierrez
487 Shaler Road
Ridgefield, NJ 07657

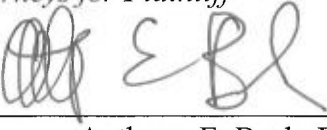
PLEASE TAKE NOTICE that on a return date to be set by the Court in conjunction with a filed Order to Show Cause, plaintiff shall move before the Superior Court of New Jersey, Law Division, Bergen County, for leave to file a Second Amended Complaint.

PLEASE TAKE FURTHER NOTICE that in support of this motion, plaintiff shall rely upon the enclosed Brief and Certification of Anthony E. Bush, Esq., served and filed herewith.

PLEASE TAKE FURTHER NOTICE that oral argument is hereby requested if opposition is filed and served.

A proposed form of Order is submitted herewith.

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Attorneys for Plaintiff

By: 

Anthony E. Bush, Esq.

DATE:

CERTIFICATION OF SERVICE

I, Anthony E. Bush, being of full age, hereby certify that on February 13, 2018, Plaintiff's Notice of Motion to Amend, Certification of Anthony E. Bush, Esq., and Proposed Order were filed via E-Courts:

Clerk, Superior Court of New Jersey
Bergen County Justice Center
10 Main Street
Hackensack, NJ 07601-7699

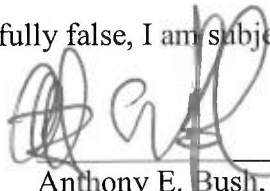
and a copy of the above-referenced papers were sent this same date via E-Courts, email and Federal Express to:

Ian Hirsch, Esq. (via E-Courts and FedEx)
Law Offices of Ian J. Hirsch & Assocs., LLP
75 Essex St., Suite 220
Hackensack, New Jersey 07601

Ross Katz, Esq. (via FedEx and Email)
Schiller & Pittenger, P.C.
1771 Front St.
Scotch Plains, New Jersey 07076

Edith Gutierrez, Pro se (via FedEx)
487 Shaler Road
Ridgefield, NJ 07657

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Anthony E. Bush, Esq.

Dated:

2/13/18

ECKERT SEAMANS CHERIN & MELLOTT, LLC

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: SUPERIOR COURT OF NEW JERSEY
: BERGEN COUNTY: LAW DIVISION
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Civil Action

**ORDER GRANTING LEAVE TO FILE
AMENDED COMPLAINT**

THIS MATTER, having been opened to the Court by Eckert Seamans Cherin & Mellot, LLC, attorneys for plaintiff, for an Order for leave to file an Amended Complaint, and the Court having considered the moving papers, all opposition and reply thereto and oral argument, if any; and for other good and sufficient cause appearing;

IT IS on this _____ day of February, 2018;

ORDERED that:

1. Plaintiff is hereby granted leave to file an Amended Complaint in this matter in the form attached as Exhibit “E” to the Certification of Anthony E. Bush, Esq., filed in connection with this Motion; and it is further ordered that;

2. A true copy of this Order shall be served by counsel for Plaintiff upon all parties to this action within _____ days of the date of receipt of this Order.

J.S.C.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

Anthony E. Bush, Esq.(N.J. Attorney ID No. #003761990)

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Defendants.

: SUPERIOR COURT OF NEW JERSEY
: BERGEN COUNTY: LAW DIVISION
: DOCKET NO.: BER-L-7268-16

Civil Action

**CERTIFICATION OF
ANTHONY E. BUSH, ESQ.**

I, Anthony E. Bush, Esq., of full age, hereby certifies as follows:

1. I am an attorney-at-law in the State of New Jersey and a member of Eckert Seamans Cherin & Mellott, LLC, which represents Plaintiff NextGear Capital, Inc. in the above-captioned action. As such, I am personally familiar with the facts set forth herein and am authorized to make this Certification on NextGear's behalf in support of its Order to Show Cause and for its Motion for Leave to File a Third Amended Complaint.

2. Attached hereto as Exhibit "A" is a copy of the original Complaint filed in this matter.

3. Attached hereto as Exhibit "B" is a copy of my letter of February 7, 2017, to the attorneys for The Luxury Haus, Inc. ("Luxury Haus"), Antonio L. Gutierrez ("Gutierrez") and Carmine DeMaio ("DeMaio").

4. Attached hereto as Exhibit "C" is a true copy of the February 13, 2017 letter received from Ian J. Hirsch, Esq., counsel for Gutierrez, in response to my letter of February 7, 2017, wherein Mr. Hirsch admits Gutierrez transferred funds to DeMaio, and wherein Hirsch states that DeMaio will agree to release those funds to NextGear upon the entry of an Order by the Court with respect to those funds.

5. Attached hereto as Exhibit "D" is a true and correct copy of a Criminal Complaint filed against Defendant Gutierrez.

6. Attached hereto as Exhibit "E" is a true copy of the proposed Third Amended Complaint that NextGear seeks leave to file.

7. On February 15, 2017, NextGear sought and obtained the entry of an Order to Show Cause with Temporary Restraints pending the return date of a hearing on an Order and Writ of Replevin directing the taking from the then Defendants The Luxury Haus Inc. and Antonio Gutierrez and proposed Defendants Carmine DeMaio, ABC Corporation and XYZ Corporation to Plaintiff proceeds of certain vehicles and/or vehicles themselves in the amount of \$1,000,000. At the same time, NextGear filed a Motion for Leave to File an Amended Complaint to name as additional defendants Carmine DeMaio ("DeMaio") and the companies that he owned or controlled ABC and XYZ that had been the recipient of allegedly fraudulently transferred funds. Attached as Exhibit "F" is a copy of an Order to Show Cause that was entered in this matter on February 16, 2017.

8. On March 10, 2017 an Order was entered granting the Motion for a Pre-Judgment Order and Writ of Replevin and ordered that \$1,000,000.00 already turned over to our firm's attorney trust account by non-parties DeMaio, ABC Co., and XYZ Company that they received from Defendant Gutierrez and The Luxury Haus or entities controlled by them belonged to

NextGear Capital and that the interests of DeMaio and ABC Co. and XYZ Corporations in those funds were terminated. See Exhibit "G" attached hereto.

9. On April 10, 2017, the deposition of Antonio Gutierrez's brother Paul was taken in connection with this matter. Paul Gutierrez testified that his brother Antonio Gutierrez gave him \$2,000,000.00 of The Luxury Haus funds to hold and then directed where the money was to be sent. Some of that money was then transferred outright to DeMaio (\$1,000,000.00 which had been the subject of the prior Order to Show Cause). According to Paul Gutierrez an additional \$300,000.00 was used to purchase cars from A&W Auto Wholesalers. He further testified that these funds were again given to him by his brother and that they belonged to The Luxury Haus. See Deposition transcript excerpts attached hereto as Exhibit "H".

10. Following Paul Gutierrez' deposition, the undersigned served Subpoenas on Paul Gutierrez' bank accounts and on A&W Auto Wholesalers, which produced documentation reflecting that A&W had received funds \$329,000.00 of Luxury Haus money from Paul Gutierrez for the purchase of vehicles and that said vehicles were transferred to Carmine DeMaio and/or companies that he controlled. Initial responses revealed a bank check in the amount of \$329,000.00 from Paul Gutierrez to A&W Auto Wholesalers. A&W's initial response to a Subpoena acknowledged the payment was for eight vehicles that were then delivered to DeMaio and/or entities he owns or controls.

11. On or about May 1, 2017, our firm served a Subpoena upon Carmine DeMaio's counsel in connection with this litigation. The Subpoena sought documents and testimony from DeMaio in connection with a cashier's check signed by Paul Gutierrez and made payable to A&W Auto Wholesalers in the amount of \$329,000.00. A copy of the cashier's check is attached as Exhibit "I".

12. Upon information and belief, the \$329,000.00 cashier's check and the proceeds thereof were part of an ongoing fraud perpetrated by Gutierrez to prevent NextGear from receiving repayment of the loan made by it to The Luxury Haus and guaranteed by Gutierrez.

13. DeMaio through his counsel has represented to the undersigned that DeMaio and/or companies he owns or controls ultimately came into possession eight vehicles (identified below as No. 1-8) which were purchased by way of the \$329,000.00 cashier's check on behalf of Antonio Gutierrez and The Luxury Haus and that the vehicles were resold. DeMaio's counsel has also volunteered and acknowledged his clients came into possession of vehicle No. 9 and 10 below totaling an additional \$45,000.00 that NextGear alleges were part of the same fraud perpetuated by Gutierrez for a total of \$374,000.00. The ten vehicles are identified below.

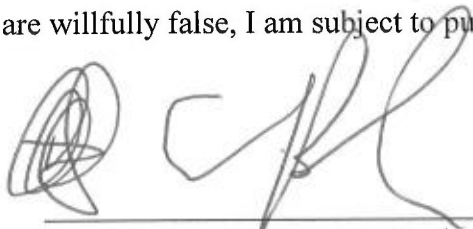
<u>Vehicle Description</u>	<u>VIN</u>	<u>Amount</u>
1. 2014 BMW	5UXKR0C5XE0H25653	\$ 2,500.00 (partial)
2. 2014 MERCEDES-BENZ	4JGDF7CE3EA422213	\$42,800.00
3. 2012 MASERATI	ZAM45KLA5C0066188	\$57,000.00
4. 2013 LINCOLN	2LMDJ8JKXDBL22226	\$23,700.00
5. 2014 LAND ROVER	SALGS2WF4EA150378	\$70,500.00
6. 2012 MERCEDES-BENZ	WDDGF8BB8CR192221	\$16,000.00
7. 2015 CADILLAC	1GYS4JKJXFR201945	\$63,500.00
8. 2014 PORSCHE	WP1AB2A2XELA59118	\$53,000.00
9. 2010 BMW	WBSWL9C58AP332671	\$28,500.00
10. 2011 FORD	1FMHK8F88BGA04604	\$19,500.00

14. DeMaio through his counsel has denied knowledge of the fraud or the allegations set forth in the litigation but acknowledges having received the vehicles in question and subsequent resale proceeds.

15. NextGear has demanded the return of the funds in issue and negotiations regarding repayment have taken place with DeMaio's counsel over an extended period of time but have not been completed.

16. In order to protect its interests, and recover the repayment of the portion of The Luxury Haus debt they represent, NextGear now file these motions for an Order to Show Cause as well as well as a Motion for Leave to Amend the Complaint.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Anthony E. Bush

Dated: February 13, 2018